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APR 04 2007

Application Serial No. 10/777,266
Reply to Office Action dated March 9, 2007REMARKS/ARGUMENTS

In an Office Action dated March 9, 2007, the Examiner set forth two restriction requirements in connection with the above-identified U.S. patent application. Initially, the Examiner outlined a restriction between Group I identified as claims 1-12 drawn to a dishwasher, classified in Class 134, subclass 111 and Group II identified as claims 13-17 drawn to a method of operating a dishwasher, classified in Class 134, subclass 10. The Examiner argues that the inventions are distinct because the apparatus as claimed can be practiced by another and materially different process such as a process that does not require pumping the majority of washing fluid to upper and lower wash arms or unsealing of the filter chamber to allow additional soil particles to drain. The Applicant respectfully submits that it would not be a burden on the Examiner to examine both the method and apparatus claims presented in this case, particularly given that the method requires many of the particulars of the apparatus. Regardless, the Applicant acknowledges the Examiner's right to make this restriction such that the Applicant will elect, without traverse, to proceed with prosecution of Group I, claims 1-12.

In addition to the above, the Examiner indicated that the invention describes two patentably distinct species, namely Species (a) illustrated in Figure 3 and Species (b) illustrated in Figure 14. The Examiner argues that the species are independent or distinct because they are unconnected in design, operation and effect. This is simply not the case and, for at least the reasons set forth below, withdrawal of this species restriction as being improper is requested.

As set forth under § 806 of the M.P.E.P., one requirement for a proper species restriction is that the claimed "species" are mutually exclusive. Figure 14 shows a cross-sectional view through the tub basin and pump-filtration system illustrated in Figure 3 (see the common reference numerals utilized), with particular focus on the presence of a sealing chamber and check ball arranged within the drain. To this end, the arrangement of Figure 14 includes all the structure of Figure 3, plus more. Accordingly, the Applicant respectfully submits that, in actuality, Figures 3 and 14 do not illustrate

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separate, mutually exclusive "species" such that withdrawal of this restriction is requested.

As the Applicant is still required to elect a single "species" for prosecution on the merits, the Applicant elects, with traverse, Species (b) of Figure 14. The Applicant submits that all of claims 1-12 are readable on the embodiment of Figure 14.

Based on the above remarks, the Applicant respectfully submits that the present application is in clear condition for examination. If the Examiner should have any additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,



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